



Office for Democratic Institutions and Human Rights

# THE NETHERLANDS

## PARLIAMENTARY ELECTIONS

15 March 2017

OSCE/ODIHR Election Assessment Mission Final Report



Warsaw  
7 June 2017

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**THE NETHERLANDS  
PARLIAMENTARY ELECTIONS  
15 March 2017**

**OSCE/ODIHR Election Assessment Mission Report<sup>1</sup>**

**I. EXECUTIVE SUMMARY**

Following an invitation from the Government of the Netherlands and based on the recommendation of a Needs Assessment Mission, the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) deployed an Election Assessment Mission (EAM) for the 15 March 2017 parliamentary elections.

The elections were competitive and pluralistic, providing voters with a wide range of choice. The campaign was conducted with respect of fundamental freedoms and the media provided fair access to all contestants. While certain aspects of legislation could be refined, the elections were conducted in a professional manner and were characterised by a high level of public confidence in the election administration and active voter participation.

The legal framework provides a sound basis for the conduct of democratic elections. The Elections Act has undergone a series of changes since the last parliamentary elections that were mostly of technical nature, addressing some previous OSCE/ODIHR recommendations. Positively, the adoption of the 2013 Political Finance Act introduced a largely comprehensive political finance system. However, other recommendations remain unaddressed, such as those related to voting rights for persons with disabilities, proxy voting, ballot design, campaign finance oversight, and complaints and appeals procedures.

The administration of elections is decentralized, with responsibilities shared between governmental entities and electoral commissions at the national and local level and with the municipalities having a significant role in the administration of voter registration and elections within their jurisdiction. The election administration enjoyed a high level of trust among stakeholders and conducted its activities in a professional manner. Regulations and training on key election day procedures, however, could be reviewed and consolidated with a view to enhancing consistency and equal treatment of all voters.

All citizens over the age of 18 are eligible to vote, unless the right is suspended by a court decision when convicted of a serious crime. Voter registration is passive, except for those abroad who must actively register. The voter registration system is inclusive and no OSCE/ODIHR EAM interlocutors raised concerns about its accuracy. Some 12.9 million citizens were registered for these elections.

All eligible voters can stand for elections. Following amendments to the Elections Act, candidate lists are submitted centrally to the Electoral Council rather than the municipalities. For these elections, 28 lists comprising 1,114 candidates were registered in an inclusive and transparent manner. The timeframe for reviewing the candidate lists are short and could be extended to avoid possible inaccuracies and mistakes in the candidate registration process.

There are no temporary special measures in the law to promote women candidates, but women's parliamentary representation is still relatively high. In the new parliament, 36 per cent of members are women. Women featured prominently in the campaign, both as candidates and participants at campaign events.

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<sup>1</sup> The English version of this report is the only official document. An unofficial translation is available in Dutch.

The election administration took active measures to promote the participation of voters with disabilities. In line with the law, at least 25 per cent of polling stations within each municipality were accessible for voters with physical disabilities. Such voters also have the right to receive additional assistance to vote from a person of their choosing, but interpretation of this provision varied in some jurisdictions with assistance only possible from an election official. There is no limitation in the law on the right to vote for persons with mental disabilities. However, unlike voters with other disabilities they are not allowed to get assistance in the voting booth, at odds with international obligations.

The campaign was dynamic and vivid, characterized by respect for fundamental freedoms of association, assembly and expression. Parties mainly used television and social media to campaign. While several parties touched upon different aspects of immigration policy in the campaign, one party in particular focused on this topic and at times used discriminatory stereotypes and intolerant rhetoric targeting Muslims, migrants and asylum seekers.

The 2013 Political Finance Act introduced a comprehensive system of political party and campaign finance taking into account numerous prior recommendations made by the OSCE/ODIHR. Despite improvements regarding the transparency of the political finance system and the introduction of a flexible range of administrative fines, some areas of concern remain, such as the independence of the oversight institution, the disclosure threshold, the possibility to make anonymous donations, and the detail and timing of reporting requirements.

The media covered the election campaign extensively, allowing citizens to have access to various political views and to make an informed choice. In line with the legislation, the public broadcasting service granted free airtime to all political parties that met the required criteria. Both the public and commercial broadcasters organized several debates between contestants.

Most OSCE/ODIHR EAM interlocutors expressed confidence in the work of bodies involved in the review of election-related disputes. While not an issue in these elections, there are nevertheless a number of shortcomings in the law that could limit the right to effective remedy, such as the absence of a possibility to appeal election results to a competent court as the final authority and adequate time limits for resolving election-related complaints.

Voters are free to vote at any polling station in their municipality, or, if requested, at any polling station in the country. In addition to casting their vote in person, voters could also cast their ballot via proxy or, for citizens residing abroad, by mail. The OSCE/ODIHR EAM did not receive any fundamental objections to the longstanding practice of proxy voting, despite challenges to the secrecy and the equality of the vote.

In accordance with the OSCE/ODIHR's methodology, the EAM did not observe election day proceedings in a systematic and comprehensive manner, but visited a limited number of polling stations on election day. The voting and counting process appeared to be well conducted in the limited number of polling stations visited by the OSCE/ODIHR EAM, although some technical issues were noted, such as ballot shortages and inconsistent enforcement of certain procedures related to proxy voting and assisting voters with physical disabilities.

## **II. INTRODUCTION AND ACKNOWLEDGEMENTS**

Following an invitation from the Government of the Netherlands to observe the 15 March 2017 parliamentary elections and based on the recommendation of a Needs Assessment Mission conducted from 23 to 25 January 2017, the OSCE Office for Democratic Institutions and Human Rights

(OSCE/ODIHR) deployed an Election Assessment Mission (EAM) from 1 to 19 March.<sup>2</sup> The OSCE/ODIHR EAM was led by Miklós Haraszti and consisted of five experts from five OSCE participating States. The EAM was based in The Hague and also visited Amsterdam, Rotterdam, Utrecht, Hilversum and Leiden.

The electoral process was assessed for compliance with OSCE commitments, other international obligations and standards for democratic elections, and with national legislation. In line with the OSCE/ODIHR's methodology, the EAM did not observe election day proceedings in a systematic or comprehensive manner, but visited a limited number of polling stations.

The OSCE/ODIHR EAM wishes to thank the Ministry of Foreign Affairs (MFA) and the Ministry of the Interior and Kingdom Relations (MoIKR) for their co-operation and assistance, as well as to express gratitude to representatives of other state and municipal institutions, election commissions, political parties, candidates, media, civil society, the resident diplomatic community, and other interlocutors for sharing their views.

### III. BACKGROUND

The Netherlands, the largest part of the Kingdom of the Netherlands, is a constitutional monarchy with a parliamentary system of government.<sup>3</sup> The bicameral parliament comprises the 150-member House of Representatives (House) and the 75-member Senate. The members of the House are directly elected for a four-year term through a national proportional contest, whereas 12 provincial assemblies indirectly elect the Senators.<sup>4</sup> The executive branch of government is formed by the Council of Ministers, headed by the Prime Minister. The Council of Ministers is appointed and dismissed by the monarch, following initial approval by the parliament. All OSCE/ODIHR EAM interlocutors agree that public institutions enjoy a relatively high level of trust among citizens.

The Netherlands has a high degree of political pluralism, with 11 political parties and 6 independent factions in the outgoing House. Previous governments have always been formed by coalitions, as no party ever obtained an absolute majority.<sup>5</sup> In addition to long-established parties, a number of smaller parties have emerged in recent years which has resulted in fragmentation of the political scene.

After two early elections, with the last one held on 12 September 2012, the outgoing parliament was the first to complete its full term since 2006. The government formed after the 2012 elections consisted of the People's Party for Freedom and Democracy (VVD) and Labour Party (PvdA). The parliamentary opposition comprised 15 political parties or groups, with the Party for Freedom (PVV) and the Socialist Party (SP) having the largest number of seats.<sup>6</sup> The participation of women in elections is relatively high, although it has declined slightly in recent years.<sup>7</sup> In the outgoing parliament, 39 per cent of members were women, and 7 out of 20 government ministers and state secretaries were women.

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<sup>2</sup> See [previous OSCE/ODIHR election reports](#) on the Netherlands.

<sup>3</sup> The Kingdom of the Netherlands also comprises Aruba, Curaçao, and Sint Maarten in the Caribbean. The four entities conduct their internal affairs autonomously, elect their own parliaments, and have their own executive branches.

<sup>4</sup> The last elections for the Senate were held in May 2015.

<sup>5</sup> According to OSCE/ODIHR EAM interlocutors, the political system is based on traditional *pillarization* (political and religious segregation) of the Dutch society, where various confessional and social groups coexisted historically, but none had a decisive majority. It is widely accepted that this has led to a political culture of coalition building.

<sup>6</sup> Other parliamentary groups include 50 Plus (50+), Christian Democratic Appeal (CDA), Christian Union (CU), Democrats 66 (D66), Green Left, Party for the Animals (PvdD), Reformed Political Party (SGP), and independent deputies who withdrew from their original groups.

<sup>7</sup> There was a decrease from 41 per cent of women in parliament in 2010 to 35 per cent in 2017. See also UN Committee on the Elimination of Discrimination against Women "[Concluding observations on the sixth periodic report of the Netherlands](#)" (18 November 2016), CEDAW/C/NLD/CO/6, para. 31.

#### IV. LEGAL FRAMEWORK

The legal framework for parliamentary elections comprises primarily the 1954 Charter of the Kingdom of the Netherlands, the 2008 Constitution of the Netherlands, the 1989 Elections Act, and the 1989 Elections Decree that unified prior election-related regulations.<sup>8</sup> Aspects of the electoral process are further regulated by the 2013 Political Finance Act (PFA), the 2009 General Administrative Law Act, the 1994 Criminal Code, and the organic laws on the courts and procedural codes. The Netherlands is a party to major international and regional instruments related to the holding of democratic elections, and the Constitution formally integrates international law into national law.<sup>9</sup>

Since the 2012 elections, the legal framework has undergone a series of changes, addressing some previous OSCE/ODIHR recommendations. Amendments to the Elections Act were mostly of a technical nature and included procedural changes to registering voters abroad, candidate registration, and the introduction of mandatory training for polling staff. Positively, the adoption of the 2013 Political Finance Act introduced comprehensive regulation of the financing of political and campaign activities, in line with several prior OSCE/ODIHR and GRECO recommendations.<sup>10</sup>

Overall, the legal framework is comprehensive and provides a solid basis to conduct democratic elections. Nevertheless, some aspects, as identified in this report, would benefit from further review to bring them fully in line with OSCE commitments, international obligations and other standards. This includes issues related to proxy voting, voting rights for persons with disabilities, ballot design campaign finance oversight, and complaints and appeals procedures.

According to the Election Decree, the MoIKR has the authority to issue regulations to clarify procedures. In the run-up to the elections, the MoIKR twice changed instructions to municipalities related to the processing of election results, creating uncertainty among election administrators. Some OSCE/ODIHR EAM interlocutors opined that all election-related instructions and regulations should be consolidated, possibly within the Elections Act. This includes regulations concerning the training of poll workers, permissible voter identification documents, the assistance provided to persons with physical disabilities and the transmission of results protocols.<sup>11</sup>

*The legal framework for elections should be reviewed to address shortcomings noted in this and previous OSCE/ODIHR reports. Consideration could be given to codify existing regulations into electoral legislation so as to ensure legal certainty and coherence. Legal reform should be undertaken well in advance of the next elections and involve open consultation with all relevant stakeholders.*

The Elections Act provides for international election observation, in line with OSCE commitments. In general, all citizens can observe election day procedures and sessions of election administration bodies and have the right to file an oral complaint on any part of the process.

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<sup>8</sup> The Charter describes the political relationship between the four countries that constitute the Kingdom of the Netherlands. The Constitution of the Netherlands is legally subordinate to the Charter.

<sup>9</sup> Including the 1966 International Covenant on Civil and Political Rights, 1965 International Convention on the Elimination of All Forms of Racial Discrimination, 1979 UN Convention on the Elimination of All Forms of Discrimination against Women, 2003 UN Convention against Corruption, 2006 Convention on the Rights of Persons with Disabilities (CRPD), and 1950 European Convention on Human Rights. The Netherlands is also a member of the Council of Europe's Venice Commission and Group of States against Corruption (GRECO).

<sup>10</sup> See the GRECO reports on Transparency of Party Funding in [the Netherlands](#).

<sup>11</sup> Section II.2.a of the 2002 Venice Commission Code of Good Practice in Electoral Matters recommends that "apart from rules on technical matters and detail – which may be included in regulations of the executive –, rules of electoral law must have at least the rank of a statute".

## V. ELECTORAL SYSTEM

The 150 members of the House are directly elected through a proportional representation system, on the basis of open candidate lists, with preferential voting. A voter can vote for any candidate on a list, and his or her choice results in a vote for this list as well. The country is divided into 20 electoral districts to allow for regional lists, but is otherwise treated as a single district. There is no legal threshold for obtaining representation and seats are distributed at the national level among the different lists according to a natural threshold.<sup>12</sup>

After the total number of seats for each list has been determined, seats are allocated among candidates on the list. The seats remaining unfilled after this first distribution are then allocated according to the d'Hondt formula.<sup>13</sup> Candidates that receive preference votes amounting to at least 25 per cent of the electoral quota are declared elected automatically, regardless of their position on the list.<sup>14</sup> Any remaining seats are awarded to candidates in the order that they appear on their respective lists.

## VI. ELECTION ADMINISTRATION

The election administration is decentralized and shared between governmental entities and electoral commissions at the national and local level. The MoIKR oversees the conduct of elections at the national level and the 388 municipal governments are responsible within their jurisdictions. Certain aspects of the election process are delegated to election commissions, which include the Electoral Council (EC) at the national level, 20 District Election Commissions (DECs), and 9,357 Precinct Election Commissions (PECs). All OSCE/ODIHR EAM interlocutors expressed a high level of trust in the administration of elections and the impartiality of the electoral bodies.

The MoIKR is responsible for the overall implementation of elections but it does not have direct authority over other election administration entities. It may propose improvements to election legislation, following their review of each election cycle, and issue regulations and guidance on specific aspects of the law. The MoIKR is also responsible for developing the format of election-related materials, such as ballots and voting cards, which are printed by the municipalities.

The EC is a permanent independent body of seven members (two women and five men) appointed by the government through an open recruitment procedure for four-year terms, renewable twice. The EC registers the names of the political parties and the candidate lists for all districts, numbers the lists of candidates, determines the final election results and allocates mandates.<sup>15</sup> It also acts as an advisory body to the government and the parliament on election-related matters, including policy and legislative reform.

The MoIKR and the EC met and communicated regularly prior to and during the election day, and jointly ran an information hotline that provided advice and information to all election stakeholders on any election-related issues. The MoIKR and the EC provided the OSCE/ODIHR EAM with all necessary information upon request and most meetings were publicly accessible and election information and policy decisions were made available online. However, at least two meetings held by

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<sup>12</sup> The natural electoral quota is calculated by dividing the total number of votes by the number of seats in the House. For these elections, the natural threshold was 70,106 votes or 0.67 per cent of the valid votes.

<sup>13</sup> In these elections, eight remaining seats were allocated. Two to the VVD, and one respectively to the CDA, D66, PVV, PVDA-GroenLinks, PvdD and SP.

<sup>14</sup> In these elections, seven candidates succeeded in obtaining the required 17,527 preferential votes, or 0.1667 per cent of the valid votes, but three did not obtain a seat as their list did not pass the required natural threshold.

<sup>15</sup> Candidate registration is newly the EC's responsibility as of these elections.

the MoIKR and the EC prior to and during the election day were closed to the public and to accredited international observers. The Elections Act specifies that certain meetings related to electoral procedures must be open to the public, but is silent on the general accessibility of election-related meetings.<sup>16</sup>

*Consideration could be given to amend the election legislation to make all election-related meetings public, in order to enhance the transparency of the election administration.*

The municipalities have a significant role in the administration of elections within their jurisdictions. Usually relying on existing staff, each municipality is responsible for voter registration and decides the number and location of polling stations, and appoints and trains PEC members. Municipalities are also responsible for tabulating election results from the PECs and for transmitting result reports to their respective DEC.<sup>17</sup> The OSCE/ODIHR EAM noted that municipalities varied in their implementation of some electoral activities, such as training of PECs and providing assistance to voters with disabilities. The MoIKR developed curricula for both in-person and online trainings and mandated that all PECs receive training prior to these elections.<sup>18</sup> However, many municipalities opted to purchase training materials from private vendors or to produce materials themselves, which did not necessarily correspond to those of the MoIKR materials.<sup>19</sup>

*The Elections Act should be amended to clearly determine the framework for training polling staff, including mandatory usage of uniform materials on key procedures so as to ensure consistency and equal treatment of voters. These materials could incorporate best practices already used by different municipalities.*

The DECs are appointed by the MoIKR, and comprise five members and three substitutes each serving a four year-term. The DECs are chaired by the mayor of the municipality in which they are located. In line with legal deadlines, the DECs tabulated, announced and transmitted the district-level results to the EC.<sup>20</sup> The MoIKR twice changed instructions related to the processing of election results within the 12 days before elections in order to protect public trust in the election results amidst media reports about possible compromised security of election management systems.<sup>21</sup> Specifically, the MoIKR banned the use of USB memory sticks to deliver result protocols from municipalities to the DECs and mandated that the data be manually entered into the results database.<sup>22</sup> Many OSCE/ODIHR EAM interlocutors reported that changes to the results transmission procedures required additional staffing and resources, with little time prior to election day to prepare for the new requirements. These OSCE/ODIHR EAM interlocutors expressed overall support of the MoIKR's intention to ensure the integrity of the election results. However, many municipalities reported that the MoIKR could have avoided uncertainty and

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<sup>16</sup> Paragraph 19 of the 2011 UNHRC General Comment No. 34 to Article 19 of the ICCPR states, "To give effect to the right of access to information, States parties should proactively put in the public domain Government information of public interest. States parties should make every effort to ensure easy, prompt, effective, and practical access to such information".

<sup>17</sup> Two municipalities, Borne and Hof van Twente, received permission from the MoIKR to count ballots at the municipal level rather than at polling stations, on a trial basis. According to the authorities there are no current plans to pursue this practice permanently.

<sup>18</sup> The recent amendment to Article E-4 of the Elections Act required that all PECs receive training but did not specify that it be based on the MoIKR's training materials.

<sup>19</sup> Municipalities indicated they used vendor-provided training, despite the additional cost, to avoid the administrative burden of conducting the trainings themselves.

<sup>20</sup> The Hague DEC is additionally responsible for registering voters residing abroad and counting of postal ballots of those voters.

<sup>21</sup> On 1 February, the MoIKR announced that the software programme previously developed by the EC to support the calculation of election results would not be used, and that municipalities should await further guidance. On 3 March, [final guidance](#) reversed this policy and permitted use of software, including the programme developed by the EC.

<sup>22</sup> The requirement for manual data entry resulted in the counting and tabulation process being extended by one calendar day.



confusion by informing the lower level election administration of planned security changes at an earlier time.

The PECs are temporary bodies appointed by the municipalities to conduct the voting and counting process. A municipality must have at least one PEC, usually composed of a chairperson and between two and six members. In line with the Elections Act, at least 25 per cent of polling stations within each municipality were accessible for voters with physical disabilities, and many municipalities exceeded this minimum. Given that a voter may cast their ballot at any polling station within a municipality, this was seen as an effective and reasonable measure by most OSCE/ODIHR EAM interlocutors. By law, voters with physical disabilities may also request assistance to vote from a person of their choice, but representatives of municipalities and PECs often maintained that such persons could only be assisted by a PEC member, at odds with the EC's guidance and international obligations.<sup>23</sup>

*Guidance should be clarified to ensure the effective facilitation of existing rights for voters with physical disabilities, including the right to request assistance to vote from a person of their choice.*

Unlike voters with a physical disability, the Elections Act does not provide the right for voters with a mental disability to request assistance in voting. This is at odds with prior OSCE/ODIHR recommendations and is inconsistent with the objectives of the CRPD. The limitation on persons with mental disabilities follows a declaration made by the Netherlands at the time of ratification of the CRPD that expressed concerns about the potential intimidation of voters with mental disabilities.<sup>24</sup> Some OSCE/ODIHR EAM interlocutors reported examples of persons with mental disabilities experiencing difficulties understanding the voting procedures and casting a ballot but being denied assistance at the polling stations. In contrast, there are no limitations on persons with mental disabilities to vote by proxy (see *Alternative Voting Methods*).

*The election legislation should be harmonized with the objectives of the CRPD, to ensure the full voting rights of persons with various types of mental disabilities, including the right to request assistance to vote from a person of their choice.*

## VII. VOTER REGISTRATION

All citizens over the age of 18 are eligible to vote, unless the right is suspended by a court decision when convicted of a serious crime.<sup>25</sup> Positively, no legal restrictions exist on the basis of mental disability.

Voter registration is passive and based on the Municipal Personal Records Database, a centralized national database containing records about the status of all citizens and maintained by each

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<sup>23</sup> Article 29(a)(iii) of the 2006 CRPD, stipulates that States must accommodate voters with disabilities by, "...at their request, allowing assistance in voting by a person of their own choice." See also Paragraph 43 of the 2014 UN Committee on the Rights of Persons with Disabilities General Comment No. 2 to Article 9 of the CRPD. Article J-28 of the Elections Act states that a person with a physical disability "can be assisted"; the website of Electoral Council [instructs](#) that such voters "be allowed help by a person designated by [themselves] or by a member of the polling station."

<sup>24</sup> The Government [interprets](#) Article 29(a)(iii) of the CRPD to apply only to persons with physical disabilities, which is contrary to the definition established in article 1 of the CRPD, which specifies persons with disability to include "those who have long-term physical, mental, intellectual, or sensory impairments..."

<sup>25</sup> According to Article 54 of the Constitution, a judge may disqualify persons from voting during a custodial sentence exceeding one year. For these elections, this impacted some 50 persons.

municipality.<sup>26</sup> The voter register was closed six weeks prior to election day, on 30 January, and reported 12,893,466 eligible voters. In general, OSCE/ODIHR EAM interlocutors expressed confidence in the accuracy and inclusiveness of the voter registry.

Voters residing abroad were required to actively register with the municipality of The Hague at least six weeks prior to election day, by post or electronically. When registering, they were able to indicate their choice on voting method and how they would like to receive their ballot (see *Alternative Voting Methods*). It is estimated that up to 800,000 citizens reside outside of the Netherlands, while some 77,500 requested registration for these elections.<sup>27</sup> As a positive step, with a view to increasing participation of voters residing abroad, the parliament passed legislation for such voters to be registered permanently in future elections. No OSCE/ODIHR EAM interlocutors raised concerns about the registration of voters abroad, but reported that some missed the registration deadline or did not receive their voter cards in time and thus could not vote (See *Complaints and Appeals*).

There are no voter lists at polling stations. At least 14 days before election day, municipalities send a voter card to each eligible voter, which voters present at a polling station within their municipality of residence in order to cast a vote.<sup>28</sup> In the event of loss, a voter may request a reissued voter card in-person from the municipality up until noon on the day prior to election day, or up to five days prior to election day if the request is submitted in writing. Additionally, in order to facilitate access to the polls, voters were able to request to vote outside of their municipality of residence.<sup>29</sup> The OSCE/ODIHR EAM interlocutors did not raise concerns with the printing or the timely and secure delivery of in-country voter cards for these elections.

Municipalities maintain a list of invalidated voter cards which they finalize the day before elections and distribute to polling stations. On election day, a PEC member checks that the voter card has not been invalidated by the municipality. Multiple voting is prevented through the retention of voter cards. Voters must also present an identification document in addition to the voter card. As in past elections, expired identification documents could be used for voter identification, although this regulation is not reflected in the Elections Act.

## VIII. CANDIDATE REGISTRATION

All eligible voters can stand for election. Additionally, a person who will turn 18 years old during the parliamentary term can stand as well and, if elected, they are put on a so-called “reserve list” until they turn 18 when they may start their mandate. Candidate registration starts with the EC registering names of political groupings, which are defined as associations with legal capacity as established by a notary on the basis of the group’s charter. Such a group may register its name with the EC and pay a deposit of

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<sup>26</sup> Most updates to the Database, including births and family deaths, must be reported by citizens to receive certain government benefits, while other status changes are updated automatically by the Registrar of Births, Deaths, Marriages and Registered Partnerships, such as marriages. Municipalities avoided duplicate registrations based on the residency established in this national database on the date that the voter registry was closed.

<sup>27</sup> If a person registers as a voter residing abroad, The Hague municipality compares the registration against the residence registries maintained by municipalities to avoid duplicate registrations.

<sup>28</sup> Voter cards are personalized documents with security features to prevent duplication, including a unique serial number and a watermark printed on special paper.

<sup>29</sup> For these voters, the request must have been made up until noon on the day prior to election day, or up to five days prior to election day if the request was submitted in writing. The municipality then cancelled the previous voter card and provided a reissued voting pass for use anywhere in the country.

EUR 450 submitted at least 43 days before the deadline for candidate list nomination.<sup>30</sup> Non-registered groupings and individual candidates are also allowed to compete with the so-called ‘blank lists’.<sup>31</sup>

For the first time in these elections, following amendments to the Elections Act, candidate lists were submitted centrally to the EC rather than the municipalities. Parties that obtained more than 15 seats in the previous elections could include a maximum of 80 candidates on their lists, while others were limited to 50.<sup>32</sup> This provision challenges the ability of political groups to compete against each other on equal terms, as required by the Paragraph 7.6 of the 1990 Copenhagen Document.<sup>33</sup>

*All political groups should be permitted to nominate the same maximum number of candidates on their lists.*

To register a candidate list, political groups not represented in the outgoing parliament must submit 30 support signatures from each electoral district where they intended to field candidates, pay a deposit of EUR 11,250, and submit a written consent from all the candidates.<sup>34</sup> The deposit is returned if a party gains at least three quarters of votes needed for one seat.<sup>35</sup> Some parties complained to the OSCE/ODIHR EAM that the amount of the deposit was too high. The time for collecting support signatures was extended from previous elections, from 7 to 14 days. A voter can sign support for only one candidate list.<sup>36</sup> Contestants may register different lists in each of the 20 electoral districts.

The EC examines and registers submitted lists and, in case of any error, the parties receive an additional three days to correct and resubmit the lists.<sup>37</sup> There was only one day, 30 January from 09.00 to 17.00, when the registered parties’ candidate lists are considered and approved. To ease this tight deadline, the EC invited all interested parties to review the documentation prior to the deadline to ensure that all requirements were fulfilled. Notwithstanding, the EC erroneously declared a submitted party’s list invalid in one district, which was successfully appealed (see *Complaints and Appeals*).

*The deadlines and resources of the Electoral Council for reviewing the candidate lists should be expanded to avoid possible inaccuracies and mistakes in the candidate registration process.*

Of 31 parties that submitted lists to the EC, 28 were registered with 16 registering lists in all 20 districts.<sup>38</sup> Three parties were rejected due to their failure to pay the deposit, with two of them also

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<sup>30</sup> There is only one day (from 09.00 to 17.00) when the registered parties’ candidate lists are considered and approved; for the 15 March parliamentary elections, the nomination day was 30 January.

<sup>31</sup> The law does not foresee an obligation to register a name and individual candidates may establish a grouping and run without a specific group name which is called running with “blank list”.

<sup>32</sup> In June 2016, the parliament rejected a proposal to allow all parliamentary parties to have 80 candidates on their lists. In the advisory note to the parliament, the EC argued that the amendment would create technical mistakes in the ballot design and counting. The EC also noted that the problem with the number of candidates could be solved by using the right of parties to nominate various lists from different districts. Of the 28 registered parties in these elections, 26 were limited to proposing 50 candidates.

<sup>33</sup> Paragraph 7.6 of the 1990 OSCE Copenhagen Document commits participating States to “provide such political parties and organizations with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities”.

<sup>34</sup> In electoral district 20, Bonaire, the required number of signatures was ten.

<sup>35</sup> The number of voters required for one seat for these elections was 70,106. The three quarters of this number was 52,579 votes which is 0.5 per cent of the total turnout (10,516,041 votes).

<sup>36</sup> Paragraph 77 of the 2010 OSCE/ODIHR and Venice Commission Guidelines on Political Party Regulation recommends that “in order to enhance pluralism and freedom of association, legislation should not limit a citizen to signing a supporting list for only one party.”

<sup>37</sup> There were two cases of parties correcting and resubmitting their lists. In one case, two candidates were involved, one of them corrected the application and got registered. In the second case, 29 candidates were involved, four corrected their applications and got registered.

<sup>38</sup> Sixteen parties registered candidates in all 20 districts, 4 parties in 19 districts, one party in 18 and the rest in fewer districts.

failing to produce sufficient declarations of support from each electoral district.<sup>39</sup> In total, 1,114 candidates were registered, including 393 women and 721 men. The registration of contestants was transparent and resulted in a broad choice of political parties and candidates. In general, the OSCE/ODIHR EAM interlocutors did not report any major challenges in meeting registration requirements.

Although equal rights for men and women are laid down in the Constitution, there are no temporary special measures in the law to promote women candidates.<sup>40</sup> As voluntary measures, parties often set target figures for women in their candidate lists. The proportion of women on the candidate lists for these elections was some 35 per cent and two parties did not nominate any female candidates.<sup>41</sup> In the new parliament, 36 per cent of elected representatives are women.

*Building upon the existing good practice of some political parties, consideration could be given to introducing special measures in the legal framework to promote women candidates, in line with international standards. This could include a minimum number of candidates from each gender on all candidate lists or a specified placement order.*

## IX. ELECTION CAMPAIGN

Election campaigning is generally unregulated. There is no official campaign period and campaigning may take place up to and on election day, except in the polling stations.

The campaign was dynamic and vivid, characterized by respect for fundamental freedoms of association, assembly and expression. Parties mainly used television and social media but also traditional outreach methods, such as canvassing at public places and individual door-to-door meetings with voters. Posters and billboards were used to a lesser extent.<sup>42</sup> The Dutch identity and culture, including the attitude towards migrants and asylum seekers, were among the central themes shaping the campaign discourse. Other topics included healthcare, social inclusion, economy, and relations with the European Union. Women featured prominently in the campaign, both as candidates and participants at campaign events.

The issues of identity and immigration were particularly predominant for the PVV which at times used discriminatory stereotypes and intolerant rhetoric targeting Muslims, migrants and asylum seekers.<sup>43</sup> Alleging media bias against his campaign, among other reasons, the PVV leader refrained from participating in the early talk show programmes and debates organized by various media outlets and instead chose to use social media to directly reach out to voters.

A number of popular non-partisan internet applications, such as *Kieskompas* (Vote Compass) and *Stemwijzer* (Vote Match) engaged voters by comparing their views with the election programmes of

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<sup>39</sup> These parties were Women's Party, Respect, and Pride of the Netherlands.

<sup>40</sup> Article 4.1 of the CEDAW states that the adoption "of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination". See also paragraph 3 of the OSCE Ministerial Council Decision 7/09, which calls on participating States to "encourage all political actors to promote equal participation of women and men in political parties, with a view to achieving better gender balanced representation in elected public offices at all levels of decision-making".

<sup>41</sup> The SGP and the Free Democratic Party (VDP).

<sup>42</sup> The municipalities across the country installed billboards with election posters of registered political parties.

<sup>43</sup> On 9 December 2016 a court found Mr. Geert Wilders, leader of the PVV, guilty of insulting and inciting racial discrimination against Dutch Moroccans. At the same time, the court did not impose a fine, arguing that the conviction itself was punishment enough. In February 2017, during a meeting with supporters, Mr. Wilders talked about "Moroccan scum" who made the streets of the country unsafe. Moreover, in its one page election manifesto the PVV promised to "de-Islamise" the Netherlands, not to allow asylum seekers and immigrants from Islamic countries to enter the country, to close all mosques and Islamic schools, and ban the Koran.

political parties. Another longstanding feature of the elections in the Netherlands is the voluntary comparative analysis conducted by the Central Planning Bureau (CPB) of the feasibility of financial-economic aspects of party programmes and their potential medium- and long-term economic impact.<sup>44</sup> For these elections, 11 political parties volunteered to submit their programmes to the CPB.<sup>45</sup> The assessment was recognised by most OSCE/ODIHR EAM interlocutors as a valuable tool for voters and parties who used the CPB results in their election campaigns.

## X. CAMPAIGN FINANCE

The PFA provides for a mixed political finance system. Parliamentary parties that have at least 1,000 members and one seat in parliament are entitled to receive public funding and may use the public subsidy for broadly defined activities, including campaign activities.<sup>46</sup> Political parties can also designate ancillary institutions which are each eligible for public funding.<sup>47</sup> In 2016, the total amount of public funding to all parliamentary parties, including their ancillary institutions, was approximately EUR 17 million.<sup>48</sup> Most OSCE/ODIHR EAM interlocutors opined that the current public funding system provides significant support to parliamentary parties.

All political parties and candidates may also receive unlimited contributions from private individuals and legal entities. Foreign donations are allowed, as well as, contrary to good practice, anonymous donations of up to EUR 1,000. Some OSCE/ODIHR EAM interlocutors expressed concerns regarding the high threshold established for anonymous donations since it may diminish the transparency of the sources of financing.<sup>49</sup>

*To enhance transparency in the sources of campaign financing, consideration should be given to prohibiting anonymous donations.*

The legislation does not impose expenditure ceilings on either political parties or candidates. OSCE/ODIHR EAM interlocutors explain this lack of regulation by the relatively low cost of election campaigns and the absence of political scandals involving financing practices.

Parliamentary parties must submit their annual financial reports certified by an auditor (appointed by the party) by 1 July (for the previous year) to the MoIKR. Pursuant to the PFA, these reports must provide accurate information of the party's financial standing and contain data on income, expenditure, debts and assets. Parties must record all contributions over EUR 1,000 whether monetary or in-kind, and public disclosure is required for contributions over EUR 4,500 from a single donor. The names of donors can be omitted if so requested. The political parties also have to disclose all debts over EUR

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<sup>44</sup> CPB is an independent body of the Ministry of Economic Affairs, Agriculture and Innovation.

<sup>45</sup> See [CPB report](#) from 16 February 2017.

<sup>46</sup> Article 7(1) of the PFA states that public funding is allocated to all parliamentary parties that have at least 1,000 members with voting rights, who each pay an annual contribution of at least EUR 12. The annual public grant consists of a general amount allocated to each eligible political party, an amount per seat and an amount per member which are both provided annually in proportion to the number of seats a party has in parliament and to the number of contributing members of the party, respectively.

<sup>47</sup> According to Article 8 of the PFA, an ancillary institution can be a political science institute, a political youth organization or an institution for foreign activities.

<sup>48</sup> See [the budget of the MoIKR for 2016](#).

<sup>49</sup> Article 3 of the Council of Europe's (CoE) Committee of Ministers [Recommendation Rec\(2003\)4](#) states that "measures taken by states governing donations to political parties should provide specific rules to ensure transparency of donations and avoid secret donations" and Article 12 stipulates that "States should require the accounts of a political party to specify all donations received by the party, including the nature and value of each donation". See also, paragraphs 173-175 of the 2011 OSCE/ODIHR and Venice Commission [Guidelines on Political Party Regulation](#).

25,000 in a calendar year. Some OSCE/ODIHR EAM interlocutors expressed concerns regarding the high public disclosure threshold. These annual reporting requirements do not apply to individual MPs.

In addition, since the adoption of the PFA, all candidates must submit a financial report of donations and debts to the MoIKR for the period commencing on 1 January of the second calendar year preceding an election year end ending 21 days before election day. Therefore, on 1 March, all candidates had to submit their reports to the MoIKR for the period 1 January 2015 to 22 February 2017. However, the law does not provide for any post-election reporting requirements and there is no legal obligation for electoral contestants to appoint an electoral manager or use a single dedicated bank account for financing. Also, the legislation does not require that the financial reports be accompanied by supporting documents, which challenges international standards.<sup>50</sup> Of all the 28 candidate lists that were subject to this reporting requirement, four did not file their report with the MoIKR.<sup>51</sup>

While there is no legal deadline for publishing the parties' annual reports, positively, the MoIKR does publish the reports by 1 October on the same year. As for the candidates' reports, the MoIKR is to make them public no later than seven days before election day.<sup>52</sup> Both candidates and political parties' financial reports are published in the Government Gazette and on the MoIKR website.

*To enhance the transparency of campaign finance, consideration should be given to lowering the public disclosure threshold for donations. In addition, the law could be reviewed to require the submission and publication of post-election reports accompanied by all supporting materials.*

The MoIKR is in charge of overseeing political parties and electoral contestants' financial reports. In February 2014, the MoIKR set up a Commission on Political Party Finance composed of three members appointed for up to two four-year terms. This commission serves as an advisory body and none of its members represent the governing parties. Notwithstanding the introduction of the commission, granting final political finance oversight powers to a government Ministry rather than an independent professional body, is not in line with international standards and good practice.<sup>53</sup>

*To safeguard objective and neutral supervision over political finance, consideration should be given to setting up an oversight body independent from the government.*

The MoIKR may impose a range of financial sanctions of up to EUR 25,000 in case of failure to record contributions and debts, failure to submit a financial report, non-compliance with disclosure requirements, or acceptance of anonymous donations above the established threshold. In case a political party is a recipient of public funding, the amount of the fines will be withdrawn from the subsidy. In case of criminal infringements of regulations, the MoIKR has to turn to the Public Prosecutor and eligibility for public funds can be suspended for up to four years. The MoIKR decisions can be appealed to the Council of State.

A review process of the implementation of the PFA by the parliamentary committee of internal affairs is expected to start in May 2017 with a view to potential improvements. This is a good practice that provides an opportunity to consider recommendations made in this report and by other stakeholders.

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<sup>50</sup> Article 7.3 of the [2003 United Nations Convention against Corruption](#) provides that states should “consider taking appropriate legislative and administrative measures... to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties”.

<sup>51</sup> The four lists were *Lokaal in de Kamer*, *MenS en Spirit*, *StemNL* and *Vrede en Recht*.

<sup>52</sup> See the [candidates' reports](#) published by the MoIKR on 8 March.

<sup>53</sup> See Article 14(a) of the CoE [Recommendation Rec\(2003\)4](#) that reads that “States should provide for independent monitoring in respect of the funding of political parties and electoral campaigns.” In its successive reports on Transparency of Party Funding in [the Netherlands](#), the GRECO expressed concerns about the MoIKR serving as the political finance oversight body.

## XI. MEDIA

A diverse and open media environment, comprising a wide variety of public and private television channels, radio stations, and daily and weekly newspapers, contributes to a vibrant political climate in the country. Television is considered to be the primary source of political information. Print media circulation rates are declining but are still relatively high, while digital media and Internet-based news services are growing in popularity. The majority of OSCE/ODIHR EAM interlocutors characterised the media as working with a high degree of professionalism and ethical standards.

The Dutch public broadcasting is not run by a centralized media company, but it is formed of member-based broadcasting associations that share common facilities gathered under the umbrella of NPO (*Nederlandse Publieke Omroep*). These broadcasting associations provide editorial media content to three television channels and seven radio stations nationwide, and thirteen regional television and radio broadcasters as well as to a number of online media.<sup>54</sup> Within NPO, there are two main general broadcasting organizations, NOS (*Nederlandse Omroep Stichting*), and NTR (uniting the former public broadcasters *Nederlandse Programma Stichting*, *Teleac* and *Radio Volks Universiteit*). Besides these two general broadcasting organizations, there are 8 member-based associations that represent a large part of the public media.<sup>55</sup> NPO operates independently from the government, even though it is funded both by taxpayers' money and by advertising revenues.<sup>56</sup>

The main two commercial broadcasters are *RTL Nederland*, with four national TV channels including *RTL4*, the most popular commercial channel in the country, and *SBS Broadcasting*, with three national TV channels. Newspapers with the highest circulation are national dailies *De Telegraaf* followed by *Algemeen Dagblad*, and *de Volkskrant*. Internet has a high penetration and its role as a source of information is growing with the Netherlands being among the top EU countries by percentage of citizens having access to Internet.<sup>57</sup>

The media system is largely based upon self-regulatory practices and institutions. The Constitution guarantees freedom of expression and freedom of speech. Detailed media-related regulations are stipulated in the 2008 Media Act, last amended in October 2016. The amendments included new provisions for the appointment of members of the Board of Directors and the Supervisory Board of the NPO.<sup>58</sup>

The key media regulatory body is the Media Authority (*Commissariaat voor de Media*, CvdM), which is responsible for overseeing publicly funded and private media for their compliance with the 2008 Media Act, the 2008 Media Decree and the 2008 Media Regulation.<sup>59</sup> The CvdM grants licenses to private broadcasters, processes complaints related to the Media Act, and has the power to impose sanctions if outlets do not comply with the legislation. The CvdM currently consists of three members appointed by the Ministry for Education, Culture and Science (MECS), which also finances their activities. The members can be dismissed by the minister if found to be unfit for violating conflict-of-interest rules. The law does not specify required qualifications for appointed members, beyond the conflict-of-interest provisions. Some OSCE/ODIHR EAM interlocutors commented on the potential

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<sup>54</sup> The Dutch public broadcasting includes cable and digital television, radio stations, websites and services via mobile platforms.

<sup>55</sup> NOS and NTR receive an annual fixed amount of airtime stated in the Media Act, while the member-based organizations receive an annual amount of airtime that roughly corresponds to the number of their members.

<sup>56</sup> Every year, NPO is allocated funds from the Ministry of Education, Culture and Science.

<sup>57</sup> As of [15 November 2015](#), almost 96 per cent of citizens had access to internet.

<sup>58</sup> Under the amendments, these boards would play a more important role than before, mainly in supervising the budget of the broadcasting organizations. For the appointment of new board members, the supervisory board will install an independent advisory committee to advise the Minister of Education, Culture and Science on the selection of new candidates. The Minister is obliged to follow the advice, unless there are important grounds to ignore it.

<sup>59</sup> The Media Regulation further specifies the procedures and implementation of the Media Act's provisions.

risks to the media regulator's independence under the current system. The current system of funding in combination with the appointment procedures of CvdM members makes the media regulator vulnerable to potential political influence, which is not fully in line with international standards and good practice.<sup>60</sup>

*The system of funding and appointing members to the Media Authority could be revised to further safeguard the independence of the media oversight body.*

The Press Council is a self-regulatory body that oversees compliance with journalistic ethics and good practice and can comment on all media production.<sup>61</sup> It is possible for all citizens to file a complaint with the Press Council related to journalistic work. The Press Council has no power to impose sanctions or fines; however, its decisions contribute to public opinion regarding journalistic conduct. It reported receiving no complaints related to the journalists' work during the election campaign.

Based on the 2008 Media Act, the CvdM (in agreement with the MECS and the EC) granted free airtime to 19 parties that registered lists in at least 19 districts. The MECS decided to grant each party 18 minutes of airtime on television and 20 minutes on radio.<sup>62</sup> The CvdM drew lots to allocate time slots for the spots on both television and radio. From 20 February to 10 March, 18 of 19 eligible parties used their free airtime, while the SGP declined the opportunity. Besides the allocation of free airtime during the elections, the political parties represented in parliament are entitled to free airtime in the public media on an annual basis.<sup>63</sup> The legislation does not further specify the conduct of the campaign in public and private media beyond the free airtime allocation.

The media covered the election campaign extensively, allowing citizens to have access to various political views and to make an informed choice. The main parliamentary political parties' leaders received daily coverage in broadcasting media in a number of formats, including news programmes, electoral debates, current affairs programmes and election talk shows.

In general, the election media coverage focused on television debates and interviews. The main electoral debates were organized by the public broadcaster NOS on 13 and 14 March, and by the commercial broadcaster RTL on 26 February and 5 March.<sup>64</sup> NOS invited 14 political parties (using both the number of seats in the parliament as well as public opinion polls as criteria for the selection), while RTL invited parties that according to an average of combined opinion polls had the highest electoral ratings (top five for the first debate and top eight for the second).<sup>65</sup> NOS also organized interviews with 13 party leaders in the framework of its *Nieuwsuur* news programme.<sup>66</sup> Debates among party leaders and other election-focused programmes were also broadcast by other channels. Two non-parliamentary parties complained to the OSCE/ODIHR EAM about unequal access to media claiming that the media only focused on the bigger parties.<sup>67</sup>

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<sup>60</sup> The [Council of Europe Recommendation Rec \(2000\) 23](#) on the independence and functions of regulatory authorities for the broadcasting sector describes the need to define sufficiently clear appointment criteria to respect the principle of pluralism and avoid domination by any political group or party.

<sup>61</sup> The Press Council is funded by the Press Council Foundation, which is composed of major print and audiovisual media associations, as well as by professional media organizations.

<sup>62</sup> Every political party received six slots of three minutes each on television and 10 time slots of one minute, as well as one 10 minute time slot each on radio.

<sup>63</sup> The total time allocated to the parties for 2017 is 18 hours and 15 minutes on television and 34 hours and 50 minutes on radio.

<sup>64</sup> While the debate on 14 March featured 14 political parties, the debate on 13 March was between the VVD leader Mark Rutte and the PVV leader Geert Wilders.

<sup>65</sup> NOS divided the debate into six different segments each lasting 8 and 10 minutes respectively, during which two or three parties debated amongst each other.

<sup>66</sup> Mr. Geert Wilders, leader of the PVV, declined to participate stating that he did not like the programme.

<sup>67</sup> These parties were the *Piratenpartij* and *Forum voor Democratie*.



For election day, NOS and RTL jointly commissioned an exit poll and broadcast the results following the closure of polling stations. They also organized a live election night programme to announce preliminary results and first reactions from political parties.

## XII. COMPLAINTS AND APPEALS

The Elections Act and the General Administrative Act stipulate the procedures for filing complaints on specific parts of the electoral process, such as voter registration, nomination of political groupings, candidate registration, campaign finance, and election day proceedings.

Complaints regarding the nomination of political groupings and candidate registration can be lodged with the EC, while those related to voter registration can be filed with municipalities. The political finance-related decisions made by the MoIKR can be appealed to the first instance court. All appeals against the electoral and administrative body's decisions are under the jurisdiction of the Council of State which is the final instance. All decisions of the Council of State are published online. Voters present at polling stations can make oral objections which are written down in the protocol of the polling station. Likewise, citizens can file oral complaints during the meetings of the DEC's, which are written down in the minutes and are reviewed by the EC.

According to the Elections Act, any voter or candidate can appeal decisions of the EC regarding the registration of candidates within four days of their issuance. The Council of State then decides on appeals related to the validity of candidate lists within six days. Otherwise, there are no specific timelines for the resolution of other election-related disputes and the general deadline of six weeks to decide on administrative complaints is applied.<sup>68</sup> However, the Council of State informed the OSCE/ODIHR EAM that in all election-related cases, they act in an expedited fashion. While not an issue in these elections, the lack of specific legal deadlines for electoral complaints may undermine the right to an effective and timely remedy.<sup>69</sup>

*Adequate time limits for deciding on election-related complaints at all levels should be provided by the legislation to ensure the implementation of the right to an effective and timely remedy.*

A total of 14 complaints were lodged with the Council of State concerning the registration of names (3), the registration of voters (2), the registration of candidates (7) and the crossing off of unused names (2). The Council of State upheld 11 complaints and struck down 3 decisions, related to candidate registration. In one instance, the EC made a mistake regarding the registration of one district list of the political party *Lokaal in de Kamer* and advised the latter to appeal to the Council of State, which then overturned the EC's decision.

Under the Dutch legal framework, the initiation of an administrative proceeding can only be triggered by the issuance of an administrative decision. In line with this rule, two cases pertaining to voter registration ended up being dealt with by two different courts. One case ended up at the Council of

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<sup>68</sup> In case there are no rules laid down in the Elections Act, the Administrative Act applies.

<sup>69</sup> Paragraph 5.10 of the 1990 OSCE Copenhagen Documents states that "everyone will have an effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity". See also section II. 3.3.g of the 2002 Venice Commission Code of Good Practice in Electoral Matters, which recommends that "time-limits for lodging and deciding appeals must be short (three to five days for each at first instance)".

State while the other one was taken up by the civil court, but were resolved in a consistent manner.<sup>70</sup>

Most interlocutors met with by the OSCE/ODIHR EAM expressed strong confidence in the complaints and appeals system, did not raise concerns on the process of adjudication, and positively noted existing checks and balances and a longstanding tradition of well-administered elections. Nevertheless, the law does not provide a mechanism for parliament's final decision on election results to be appealed to a judicial authority, which is inconsistent with OSCE commitments and international good practice.<sup>71</sup>

*Consideration should be given to explicitly provide the legal right to appeal election results to a competent court as the final authority.*

### XIII. ALTERNATIVE VOTING METHODS

In addition to casting their vote in person at a polling station, a voter could cast their ballot via proxy or, for citizens residing abroad, by mail.

All voters had the option to appoint a proxy to vote on their behalf if they were unable to come to a polling station, by signing an authorization on the back of the voter card, with no prior application. In these elections, 9.1 per cent of all voters cast their ballots by proxy. Contrary to prior OSCE/ODIHR recommendations, no justification is required to request a proxy vote.<sup>72</sup> Each proxy could vote on behalf of up to two persons and recent amendments to the Elections Act prohibited voters from requesting a proxy in a polling station. The proxy presents the voter's voter card and a copy of the voter's identification, which is used for signature verification by a member of the PEC. While proxy voting is an alternative option for most citizens, it is the only option for prisoners.

Statistics on the use of proxy voting in the Netherlands suggest a historically higher rate of use among women (with men more likely to serve as proxies) and among ethnic and religious minorities.<sup>73</sup> The MoIKR and the EC monitored the use of proxy voting and solicited explanations from the municipalities in which a comparatively high rate of proxy votes occurred with a view to including this information in their post-election evaluations. However, notwithstanding the previous attempts to regulate proxy voting, disparities appeared to persist in its use across different communities in these elections.<sup>74</sup>

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<sup>70</sup> In the first case, a voter living abroad did not receive her voter card because she had not registered within the legal deadline. The decision issued by the municipality stating that she had failed to register on time was then upheld by the Council of State. In the second instance, the political party *D66* filed a complaint on behalf of some 154 voters residing abroad who did not receive their voter cards in time and thus could not exercise their franchise. Due to the absence of a decision issued by the respective municipality, the case was taken up by the civil court which rejected their complaints.

<sup>71</sup> Paragraph 18.4 of the 1991 OSCE Moscow Document states that "the participating States will endeavour to provide for judicial review of such [administrative] regulations and decisions." Section II.3.3.a of the 2002 Venice Commission Code of Good Practice in Electoral Matters recommends that "Appeal to parliament, as the judge of its own election, is sometimes provided for but could result in political decisions. It is acceptable as a first instance in places where it is long established, but a judicial appeal should then be possible".

<sup>72</sup> Any person registered to vote in the same municipality as the original voter can serve as a proxy. The proxy must cast their own vote at the same time as any proxy votes.

<sup>73</sup> In a [survey conducted by Gesellschaft für Konsumforschung \(GfK\) \(in Dutch\)](#) on behalf of the MoIKR, of the voters who voted by proxy in the 2012 parliamentary elections, 56 per cent were women and 44 per cent were men. Following the 2012 and 2014 elections, the EC [reported](#) that ethnic and religious minorities voted by proxy at higher rates. A prior [report by the Central Bureau of Statistics](#) estimated that in the 2006 elections, 21 per cent of voters in communities with considerable minorities voted by proxy, double the national average, and that up to 25 per cent of women from among minorities voted by proxy.

<sup>74</sup> According to initial research by the EC, these cases included immigrant majority communities, as well as Orthodox Christian communities such as Urk and Volendam.

The majority of OSCE/ODIHR EAM interlocutors did not express fundamental objections to the longstanding practice of proxy voting, despite limited safeguards in place to verify that the proxy fulfilled the intent of the voter, and despite potential challenges to the secrecy and the equality of the vote. Although proxy voting in the Netherlands enjoys broad support and is considered to facilitate access to voting, the scale and disproportionality of its use are at odds with the OSCE commitments and other international standards for ensuring the equality and secrecy of the vote and respect for voters' choices.<sup>75</sup> In consideration of these possible issues, and given the existing opportunities for voters to vote at any polling station in the country and to send ballots by post if residing abroad during elections, proxy voting may be reconsidered.

*Consideration should be given to reviewing the need to maintain proxy voting given the existing alternative methods to cast a ballot and with a view to ensuring the secrecy and equality of the vote. Alternatives to proxy voting should be explored for prisoners, which may include establishing polling stations in prisons or providing mobile ballot boxes.*

Citizens residing abroad may vote in person or by proxy in the Netherlands or request a postal ballot.<sup>76</sup> In an attempt to minimize problems with postal delivery of ballots, The Hague DEC mailed voter cards and ballots four weeks prior to election day. While voting materials were mailed according to legal deadlines, some OSCE/ODIHR EAM interlocutors reported delays in the receipt of mailed voting materials. For the first time in these elections, as a means to limit delays with international postal services, voters could opt to receive their postal ballot by email.<sup>77</sup> However, if a voter chose to receive their ballot electronically, they were still required to return their voter card, which were only delivered by post. Voters residing abroad could return their ballot by mail to The Hague DEC or to any of 22 Dutch Embassies assigned by the MFA, who then counted the votes and sent preliminary results protocols by email to The Hague DEC on election night.<sup>78</sup> In order to be valid, ballots needed to be received by 15:00 local time on election day.

#### **XIV. ELECTION DAY AND POST-ELECTION DEVELOPMENTS**

In accordance with the OSCE/ODIHR's methodology, the EAM did not observe election day proceedings in a systematic and comprehensive manner, but visited a limited number of polling stations on election day in The Hague, Leiden, and Rotterdam.

The voting process in polling stations visited by the OSCE/ODIHR EAM appeared to be well organized. Given that election day is a working day and that voters are free to vote at any polling station in their municipality, there is an established practice to set up polling stations in public spaces such as train stations and shopping centres for voters' convenience, most of which were accessible for voters with physical disabilities. The law provides that polling stations are open between 7:30 and 21:00, although municipalities had the flexibility to provide earlier or later opening hours. One municipality, Nijmegen, reported plans to stay open past the legal voting hours to address concerns

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<sup>75</sup> Paragraphs 7.3 and 7.4 of the 1990 OSCE Copenhagen Document require participating States to "guarantee universal and equal suffrage to adult citizens" and to "ensure that votes are cast by secret ballot or by equivalent free voting procedure...". See also article 25 of the 1966 ICCPR and Convention for Protection of Human Rights and Fundamental Freedoms, Protocol 1 (Article 3).

<sup>76</sup> Some 60,000 ballots in these elections were cast by voters residing abroad.

<sup>77</sup> There are no security features to the ballot. If voters choose to receive a ballot by email, the printer-friendly version of a ballot is e-mailed to them.

<sup>78</sup> In addition, three collection points at military posts abroad were assigned by the Ministry of Defense and three collection points in the Dutch representations at the Caribbean countries of the Kingdom of the Netherlands. The ballots were counted at these collection points with results transmitted by email and confirmed by phone call with The Hague DEC, while official result protocols were sent by post.

about ballot shortages. The EC issued informal guidance to this municipality on election night to comply with the mandatory closing hours.

The fact that voters are free to vote in any polling station in their municipality could potentially result in logistical problems, such as long queues and insufficient number of ballots. It appears that not all municipalities were able to accurately estimate the number of voters per polling station based on previous elections, particularly as the turnout was higher during these elections than recent ones. Polling stations that experienced ballot shortages reported the situation to their municipality, which sent additional ballots or redirected ballots from other polling stations. In the meantime, polling station staff redirected voters to alternative polling stations or, in some cases, closed the polling stations early.<sup>79</sup> The voter turnout countrywide was 81.9 per cent.

*Consideration should be given to equipping polling stations with sufficient supplies and to monitor their status throughout election day to prevent interruptions in the voting process.*

While the PECs were generally highly professional and knowledgeable about the voting process, the OSCE/ODIHR EAM observed several instances of inconsistent enforcement of certain election day procedures, specifically, voting by proxy and assisting voters with physical disabilities. Some polling stations permitted voters to designate a proxy within the polling station, a practice that has been prohibited since the previous election. Additionally, certain polling stations required assistance to be provided by a member of the PEC, at odds with the legal requirement to allow the voter to request assistance from a person of their choice. This reinforces the need for clearer guidance and uniform implementation of key election day procedures.

Due to the substantial number of contestants, the ballot paper was large (approximately one-metre long) and at times difficult to handle, particularly for elderly voters. Several OSCE/ODIHR EAM interlocutors raised further concerns that the design of ballot papers might be difficult to understand, especially for voters with visual impairments, limited literacy, or mental disabilities.<sup>80</sup> It also made the counting process more difficult.

*Consideration should be given to designing a more accessible and user-friendly format of ballot, for instance, by the use of logos or colours, or by providing a different format to make it easier for the voter to identify candidates and for polling officials to conduct the counting process.*

The counting followed by the OSCE/ODIHR EAM was generally transparent and orderly. The counting process has three phases after the opening of the ballot box. The number of ballots in the ballot box is determined; the ballots are then sorted by electoral list and counted; and finally, the number of votes for each candidate is determined.

All PEC protocols for a municipality are tabulated by the DEC and then submitted to the EC to determine the final results and then submit all protocols to the Credentials Committee of the outgoing parliament. The Committee, which consisted of five members of parliament (two from the ruling parties and three from the opposition ones, all of them women), reviewed the protocols to determine the legitimacy of the results. The Committee checks any complaints recorded in the protocols and may decide on a partial or total recounts or repeat elections in case of serious violations. In practice, the protocols are reviewed by civil servants working in the parliament, excluding those with a political

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<sup>79</sup> Polling stations in The Hague, Nijmegen, and Utrecht ran out of ballot papers and in some cases closed the polling stations early.

<sup>80</sup> In response to prior OSCE/ODIHR recommendations, the MoIKR has previously proposed changes to the ballot design. However, they were rejected by the parliament, and no additional steps have been taken to alter its size or format. To facilitate voting for voters with visual impairments, each polling station is equipped with a magnifying glass, though some OSCE/ODIHR EAM interlocutors indicated that this does not constitute sufficient aid.

affiliation or those who work for the government. No OSCE/ODIHR EAM interlocutors expressed concerns related to the work of the Credentials Committee, stating that there is a longstanding tradition of having the outgoing parliament members validating the election results and checking the background of the newly elected members of the House. Between 19 and 22 March, both the Credentials Committee and the EC separately reviewed the election results and on 22 March, the outgoing parliament validated them. Newly-elected MPs received their mandates on 23 March.

## **XV. RECOMMENDATIONS**

These recommendations, as contained throughout the text, are offered with a view to further enhance the conduct of elections in the Netherlands and to support efforts to bring them fully in line with OSCE commitments and other international obligations and standards for democratic elections. These recommendations should be read in conjunction with past OSCE/ODIHR recommendations that remain to be addressed. The OSCE/ODIHR stands ready to assist the authorities of the Netherlands to further improve the electoral process and to address the recommendations contained in this and previous reports.<sup>81</sup>

### **A. PRIORITY RECOMMENDATIONS**

1. The legal framework for elections should be reviewed to address shortcomings noted in this and previous OSCE/ODIHR reports. Consideration could be given to codify existing regulations into electoral legislation so as to ensure legal certainty and coherence. Legal reform should be undertaken well in advance of the next elections and involve open consultation with all relevant stakeholders.
2. Consideration should be given to reviewing the need to maintain proxy voting given the existing alternative methods to cast a ballot and with a view to ensuring the secrecy and equality of the vote. Alternatives to proxy voting should be explored for prisoners, which may include establishing polling stations in prisons or providing mobile ballot boxes.
3. The election legislation should be harmonized with the objectives of the CRPD, to ensure the full voting rights of persons with various types of mental disabilities, including the right to request assistance to vote from a person of their choice.
4. Adequate time limits for deciding on election-related complaints at all levels should be provided by the legislation to ensure the implementation of the right to an effective and timely remedy.
5. Consideration should be given to explicitly provide the legal right to appeal election results to a competent court as the final authority.
6. To safeguard objective and neutral supervision over political finance, consideration should be given to setting up an independent oversight body.

### **B. OTHER RECOMMENDATIONS**

#### **Election Administration**

7. Consideration could be given to amend the election legislation to make all election-related meetings public, in order to enhance the transparency of the election administration.

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<sup>81</sup> In paragraph 25 of the 1999 OSCE Istanbul Document, OSCE participating States committed themselves “to follow up promptly the ODIHR’s election assessment and recommendations”.

8. The Elections Act should be amended to clearly determine the framework for training polling staff, including mandatory usage of uniform materials on key procedures so as to ensure consistency and equal treatment of voters. These materials could incorporate best practices already used by different municipalities.
9. Guidance should be clarified to ensure the effective facilitation of existing rights for voters with physical disabilities, including the right to request assistance to vote from a person of their choice.
10. Consideration should be given to designing a more accessible and user-friendly format of ballot, for instance, by the use of logos or colours, or by providing a different format to make it easier for the voter to identify candidates and for polling officials to conduct the counting process.

### **Candidate Registration**

11. All political groups should be permitted to nominate the same maximum number of candidates on their lists.
12. The deadlines and resources of the Electoral Council for reviewing the candidate lists should be expanded to avoid possible inaccuracies and mistakes in the candidate registration process.
13. Building upon the existing good practice of some political parties, consideration could be given to introducing special measures in the legal framework to promote women candidates, in line with international standards. This could include a minimum number of candidates from each gender on all candidate lists or a specified placement order.

### **Campaign Finance**

14. To enhance transparency in the sources of campaign financing, consideration should be given to prohibiting anonymous donations.
15. To enhance the transparency of campaign finance, consideration should be given to lower the public disclosure threshold for donations. In addition, the law could be reviewed to require the submission and publication of post-election reports accompanied by all supporting materials.

### **Media**

16. The system of funding and appointing members to the Media Authority could be revised to further safeguard the independence of the media oversight body.

### **Election Day**

17. Consideration should be given to equipping polling stations with sufficient supplies and to monitor their status throughout election day to prevent interruptions in the voting process.

**ANNEX: OFFICIAL ELECTION RESULTS<sup>82</sup>**

<b>Party Name</b>	<b>Percentage of Votes</b>	<b>Number of Votes</b>	<b>Number of Seats</b>
People's Party for Freedom and Democracy	21.3	2,238,351	33
Party for Freedom	13.1	1,372,941	20
Christian Democratic Appeal	12.4	1,301,796	19
Democrats 66	12.2	1,285,819	19
Green Left	9.1	959,600	14
Socialist Party	9.1	955,633	14
Labour Party	5.7	599,699	9
Christian Union	3.4	356,271	5
Party for Animals	3.2	335,214	5
50 Plus	3.1	327,131	4
Reformed Political Party	2.1	218,950	3
DENK	2.1	216,147	3
Forum for Democracy	1.8	187,162	2
Entrepreneurship Party	0.1	12,570	0
For the Netherlands	0.4	38,209	0
New Roads	0.1	14,362	0
The Burger Movement	0.0	5,221	0
Liberal Party	0.0	2,938	0
GeenPeil	0.0	4,945	0
The Pirate Party	0.3	35,478	0
Article 1	0.3,	28,700	0
Lokaal in de Kamer	0.1	6,858	0
Not Voters	0.1	6,025	0
Jesus Alive	0.0	3,099	0
Libertarian Party	0.0	1,492	0
Men and Spirit / Basic Income Party / V-R, StemNL	0.0	726	0
Free Democratic Party	0.0	177	0

<sup>82</sup> Source: <https://www.kiesraad.nl/actueel/nieuws/2017/03/20/officiële-uitslag-tweede-kamerverkiezing-15-maart-2017>

## ABOUT THE OSCE/ODIHR

The Office for Democratic Institutions and Human Rights (OSCE/ODIHR) is the OSCE's principal institution to assist participating States "to ensure full respect for human rights and fundamental freedoms, to abide by the rule of law, to promote principles of democracy and (...) to build, strengthen and protect democratic institutions, as well as promote tolerance throughout society" (1992 Helsinki Summit Document). This is referred to as the OSCE human dimension.

The OSCE/ODIHR, based in Warsaw (Poland) was created as the Office for Free Elections at the 1990 Paris Summit and started operating in May 1991. One year later, the name of the Office was changed to reflect an expanded mandate to include human rights and democratization. Today it employs over 130 staff.

The OSCE/ODIHR is the lead agency in Europe in the field of **election observation**. Every year, it coordinates and organizes the deployment of thousands of observers to assess whether elections in the OSCE region are conducted in line with OSCE commitments, other international obligations and standards for democratic elections and with national legislation. Its unique methodology provides an in-depth insight into the electoral process in its entirety. Through assistance projects, the OSCE/ODIHR helps participating States to improve their electoral framework.

The Office's **democratization** activities include: rule of law, legislative support, democratic governance, migration and freedom of movement, and gender equality. The OSCE/ODIHR implements a number of targeted assistance programs annually, seeking to develop democratic structures.

The OSCE/ODIHR also assists participating States' in fulfilling their obligations to promote and protect **human rights** and fundamental freedoms consistent with OSCE human dimension commitments. This is achieved by working with a variety of partners to foster collaboration, build capacity and provide expertise in thematic areas including human rights in the fight against terrorism, enhancing the human rights protection of trafficked persons, human rights education and training, human rights monitoring and reporting, and women's human rights and security.

Within the field of **tolerance** and **non-discrimination**, the OSCE/ODIHR provides support to the participating States in strengthening their response to hate crimes and incidents of racism, xenophobia, anti-Semitism and other forms of intolerance. The OSCE/ODIHR's activities related to tolerance and non-discrimination are focused on the following areas: legislation; law enforcement training; monitoring, reporting on, and following up on responses to hate-motivated crimes and incidents; as well as educational activities to promote tolerance, respect, and mutual understanding.

The OSCE/ODIHR provides advice to participating States on their policies on **Roma and Sinti**. It promotes capacity-building and networking among Roma and Sinti communities, and encourages the participation of Roma and Sinti representatives in policy-making bodies.

All OSCE/ODIHR activities are carried out in close co-ordination and co-operation with OSCE participating States, OSCE institutions and field operations, as well as with other international organizations.

More information is available on the ODIHR website ([www.osce.org/odihr](http://www.osce.org/odihr)).